Age Action Ireland
Protecting Older Adults
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Elder Abuse: Legal Issues Explored

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Overview

Capacity to make decisions
Enduring Powers of Attorney
Wills
Joint Accounts
Gifts/Future Needs/Improvident bargain
Health Care Decisions/Advance Care Decisions
Administration of Estates
Conclusion
Capacity/Scheme of Mental Capacity Bill 2008

• Presumption of Capacity
• Functional Approach – time and issue specific
• Definition – statutory/common law
• Who can decide – existing/proposed
Scheme of the Mental Capacity Bill 2008
Guiding Principles

• Presumption of capacity
• Law on capacity should be enabling not restrictive – no intervention unless necessary
• Not treated as unable to make decision unless all practical steps to assist
• Any act or decision - least restrictive of the person’s rights and freedom of action
Scheme of the Mental Capacity Bill 2008
Guiding Principles continued

• Due regard to right to dignity, bodily integrity, privacy and autonomy
• Account must be taken of person’s past and present wishes where ascertainable
• Account taken of views of other persons with interest in welfare where known
• Any act or decision must be make in the best interests of the person
Who can decide – existing/proposed

- Ward of Court/Guardianship
- Enduring Power of Attorney
- Doctrine of Necessity
- Informal Decision making
Enduring Power of Attorney (EPA)

• How created
• Selection of attorney
• What authority is given – *general or limited*
• Personal care decisions/personal welfare decisions
• Registration
Enduring Power of Attorney (continued)

• Safeguards on registration
• Misuse/Abuse
• Fiduciary obligations – attorney/financial institution
• Gifts and remuneration
• Best interest principle/General principle
Wills

- Whose instructions/undue influence
- Requirements
- Testamentary Capacity
- Attendance at hospital/residential setting
- Right to privacy and autonomy
Joint Accounts

• Intention of transferring in to joint names
  – Convenience
  – Is joint account an asset in the estate of a deceased person

• Is there an intention to make a gift either at date of opening of joint account or at date of death

• Even if no intention to benefit do legal presumptions apply
Gifts/Future Needs/Improvident Bargain

- Capacity to make gift
- Undue influence/independent advice
- Who is solicitor acting for
- All relevant circumstances/changed circumstances
- Provision for future needs
Health Care Decisions

- Informed consent – valid consent
- Adult who lacks capacity
- Next of Kin
- Doctrine of Necessity
- Advance Care Directives – end of life decisions
Administration of Estates

Older person is a:
- personal representative (executor/administrator)
- beneficiary of an estate
- surviving spouse
Conclusion

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